

Message Text

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TO AMEMBASSY MADRID PRIORITY

C O N F I D E N T I A L STATE 215666

E.O. 11652: GDS

TAGS: PFOR, MARA, SP, US

SUBJECT: SPANISH BASE NEGOTIATIONS-SOFA-U.S. PROPOSALS

1. FOLLOWING ARE U.S. DRAFT SOFA PROPOSALS WHICH WE ARE PREPARED TO DISCUSS WITH SPANISH AT NEXT ROUND SOFA TALKS IN WASHINGTON. REQUEST EMBASSY TRANSMIT TEXTS TO FONMIN (PERINAT) AS SOON AS POSSIBLE. EACH TEXT SHOULD BE DATED SEPTEMBER 10, 1975.

2. (A) ARTICLE XVII - IF THE GOVERNMENT HAVING THE PRIMARY RIGHT TO EXERCISE JURISDICTION UNDER PARA 3 OF ARTICLE XV OF THIS AGREEMENT DECIDES NOT TO EXERCISE JURISDICTION, IT WILL NOTIFY THE AUTHORITIES OF THE OTHER GOVERNMENT AS SOON AS POSSIBLE. THE AUTHORITIES OF THE GOVERNMENT HAVING THE PRIMARY RIGHT SHALL GIVE SYMPATHETIC CONSIDERATION TO A REQUEST FROM THE AUTHORITIES OF THE OTHER GOVERNMENT FOR A WAIVER OF ITS RIGHT.

(B) ARTICLE XVIII, PARAGRAPH 3 - THE CUSTODY OF A MEMBER OF THE UNITED STATES PERSONNEL IN SPAIN, WHO IS LEGALLY CONFIDENTIAL

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SUBJECT TO DETENTION BY THE MILITARY AUTHORITIES OF THE UNITED STATES AND OVER WHOM SPANISH JURISDICTION IS TO BE EXERCISED, SHALL BE THE RESPONSIBILITY OF THE UNITED STATES MILITARY AUTHORITIES, AT THEIR REQUEST, UNTIL THE CON-

CLUSION OF ALL JUDICIAL PROCEEDINGS, AT WHICH TIME THE MEMBER WILL BE DELIVERED TO SPANISH AUTHORITIES AT THEIR REQUEST FOR EXECUTION OF THE SENTENCE. NEVERTHELESS, AT THE CONCLUSION OF A TRIAL AT WHICH THE SENTENCE OF THE COURT INCLUDES CONFINEMENT FOR MORE THAN ONE YEAR, THE MEMBER SHALL, IF ORDERED BY THE JUDGE OF THE COURT, BE DELIVERED TO THE SPANISH AUTHORITIES FOR EXECUTION OF THE SENTENCE EVEN IF THE VERDICT OF THE TRIAL IS BEING APPEALED. DURING PERIODS OF CUSTODY BY THE UNITED STATES MILITARY AUTHORITIES, THOSE AUTHORITIES, WITHIN THE LEGAL POWERS GIVEN THEM BY THE MILITARY LAW OF THE UNITED STATES, SHALL GIVE FULL CONSIDERATION TO THE DECISIONS OF THE COMPETENT SPANISH AUTHORITIES REGARDING CONDITIONS OF CUSTODY. THE UNITED STATES MILITARY AUTHORITIES SHALL GUARANTEE HIS IMMEDIATE APPEARANCE BEFORE THE COMPETENT SPANISH AUTHORITIES IN ANY PROCEEDINGS THAT MAY REQUIRE HIS PRESENCE AND, IN ANY CASE, HIS APPEARANCE AT THE TRIAL.

(C) ARTICLE XXVII - CLAIMS, OTHER THAN CONTRACTUAL CLAIMS, FOR DAMAGES ARISING OUT OF ACTS OR OMISSIONS DONE IN THE PERFORMANCE OF OFFICIAL DUTIES BY MILITARY MEMBERS OF THE UNITED STATES PERSONNEL IN SPAIN OR CIVILIAN EMPLOYEES OF THE UNITED STATES FORCES, OR OUT OF ANY OTHER ACT, OMISSION OR OCCURRENCE FOR WHICH THE UNITED STATES ARMED FORCES ARE LEGALLY RESPONSIBLE, AND CAUSING INJURY OR DAMAGE IN SPAIN TO SPANISH PERSONS OR PROPERTY, SHALL BE DEALT WITH BY THE SPANISH AUTHORITIES IN ACCORDANCE WITH THE FOLLOWING PROVISIONS: (SAME AS IN PRESENT TEXT).

(D) ARTICLE XXX, PARAGRAPH 2 - THE FILING OF A SUIT BEFORE A SPANISH CIVIL COURT AGAINST A MILITARY MEMBER OF THE UNITED STATES PERSONNEL IN SPAIN OR CIVILIAN EMPLOYEE OF THE UNITED STATES FORCES WILL BE CONSIDERED TO BE THE RENUNCIATION OF ANY RIGHT OF THE SPANISH GOVERNMENT OR OF THE PERSON FILING THE SUIT TO COMPENSATION BY THE GOVERNMENT OF THE UNITED STATES IN ACCORDANCE WITH THIS ARTICLE.
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HOWEVER, WHEN SUCH A SUIT IS TERMINATED BECAUSE OF THE ISSUANCE BY THE MILITARY AUTHORITIES OF THE UNITED STATES OF THE CERTIFICATE OF OFFICIAL DUTY REFERRED TO IN PARA 2 OF ARTICLE XXVI OF THIS AGREEMENT, A CLAIM MAY BE PRO-

CESSED ACCORDING TO THE PROVISIONS OF ARTICLE XXVII OF THIS AGREEMENT, IF APPLICABLE, OR ACCORDING TO THE PROVISIONS OF PARAGRAPH 1.B OF THIS ARTICLE.

(E) ARTICLE XXXIII, PARAGRAPH 2 - THE GOVERNMENT OF SPAIN WILL INSURE THAT COPIES OF THIS AGREEMENT AND THE RELEVANT PROCEDURAL ANNEXES ARE DISTRIBUTED THROUGHOUT THE SPANISH JUDICIAL SYSTEM.

(F) ARTICLE XXXV, PARAGRAPH 5 - THE UNITED STATES FORCES SHALL CONSULT WITH THE SPANISH MILITARY ADMINISTRATION BEFORE INITIATING ANY SIGNIFICANT MODIFICATION OF ESTABLISHED CONDITIONS OF EMPLOYMENT OF LOCAL LABOR PERSONNEL.

(G) ARTICLE XXXVIII, PARAGRAPH 1 - WHEN IT IS NECESSARY TO REDUCE THE NUMBER OF LOCAL LABOR PERSONNEL, THE UNITED STATES FORCES SHALL NOTIFY THE SPANISH MILITARY ADMINISTRATION NOT LESS THAN 15 CALENDAR DAYS PRIOR TO THE ISSUANCE OF NOTICES TO EMPLOYEES AFFECTED BY THE REDUCTION, UNLESS THE REDUCTION IS NECESSITATED BY ACTIONS OF THE GOS. WHEN CIRCUMSTANCES PERMIT, LONGER ADVANCE NOTICE WILL BE GIVEN TO THE SPANISH MILITARY ADMINISTRATION IN ORDER TO FACILITATE PLANNING TO ASSIST EMPLOYEES IN FINDING OTHER EMPLOYMENT. EACH REDUCTION-IN-FORCE NOTICE GIVEN TO LOCAL LABOR PERSONNEL SHALL SPECIFY AN EMPLOYMENT TERMINATION DATE AT LEAST 30 CALENDAR DAYS, EXCLUSIVE OF THE DATE OF RECEIPT, FROM THE DATE OF DELIVERY OF THE NOTICE.

(H) ARTICLE XL, PARAGRAPH 3 - TO EXAMINE THE FINAL DECISIONS OF THE SPANISH AUTHORITIES REGARDING CLAIMS REFERRED TO IN PARAGRAPH 2 OF THIS ARTICLE WITH A VIEW TO IMPLEMENTING SUCH DECISIONS. SUCH IMPLEMENTATION MAY INCLUDE SHARING BY SPAIN AND THE UNITED STATES OF THE PAYMENT OF MONETARY AWARDS, AND APPROPRIATE RESOLUTION
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OF QUESTIONS RELATING TO THE FURTHER UTILIZATION BY THE UNITED STATES FORCES OF LOCAL LABOR PERSONNEL AFFECTED BY SUCH DECISIONS.

(I) ARTICLE XLVIII - 1. MILITARY SERVICE EXCHANGES, COMMISSARIES, MESS HALLS, SOCIAL CENTERS AND RECREATIONAL SERVICE AREAS ESTABLISHED BY THE UNITED STATES FORCES FOR THE USE OF UNITED STATES PERSONNEL IN SPAIN SHALL BE EXEMPT FROM SPANISH TAXES OR CHARGES OF ANY KIND. THE IMPORTATION, EXPORTATION, PURCHASES, OR SALE TO UNITED

STATES PERSONNEL IN SPAIN OF GOODS AND OTHER PROPERTY BY OR ON BEHALF OF THESE ORGANIZATIONS SHALL BE EXEMPT FROM SPANISH TAXES, DUTIES AND OTHER CHARGES.

2. THE JOINT COMMITTEE SHALL ADOPT APPROPRIATE MEASURES TO PREVENT THE SALE OF GOODS AND PROPERTY IMPORTED OR ACQUIRED IN SPAIN BY THE ORGANIZATIONS REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE TO PERSONS WHO ARE NOT AUTHORIZED TO UTILIZE SUCH ORGANIZATIONS. THESE MEASURES MAY INCLUDE QUOTAS ON THE AMOUNT OF ALCOHOLIC BEVERAGES AND TOBACCO IMPORTED BY SUCH ORGANIZATIONS.

3. THE UNITED STATES FORCES SHALL CLOSELY REGULATE THE SALE BY THE AFOREMENTIONED ORGANIZATIONS OF ELECTRICAL APPLIANCES OF SIGNIFICANT VALUE, SUCH AS PHONOGRAPHS, RADIOS AND TELEVISION SETS. THE REGULATIONS SHALL INCLUDE PROCEDURES FOR THE VERIFICATION OF THE EXPORTATION OR OTHER VALID DISPOSITION OF SUCH PROPERTY. UNITED STATES MILITARY AUTHORITIES SHALL MAKE AVAILABLE TO SPANISH CUSTOMS AUTHORITIES RECORDS OF SALES OF THESE ITEMS, AND IN CASES OF IMPROPER DISPOSITION OF SUCH ITEMS SHALL RENDER ALL ASSISTANCE WITHIN THEIR POWER TO SPANISH CUSTOMS AUTHORITIES IN THE COLLECTION OF ANY RESULTING DUTIES AND PENALTIES.

(J) ARTICLE XLIX - 1. PROPERTY IMPORTED OR EXPORTED PURSUANT TO THE PROVISIONS OF ARTICLES XLIII, XLVI OR XLVIII OF THIS AGREEMENT WILL BE SUBJECT TO CUSTOMS FORMALITIES IN THE MANNER AGREED TO BY THE APPROPRIATE AUTHORITIES OF THE TWO GOVERNMENTS. THESE FORMALITIES CONFIDENTIAL

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MAY INCLUDE CUSTOMS INSPECTION OF PROPERTY IMPORTED THROUGH SPANISH COMMERCIAL PORTS. SUCH INSPECTION WILL BE CONDUCTED ON A "SAMPLE CHECK" BASIS IN A MANNER THAT WILL NOT DAMAGE THE PROPERTY BEING INSPECTED OR UNDULY DELAY DELIVERY TO OR INCREASE THE ADMINISTRATIVE BURDEN OF THE UNITED STATES FORCES OR UNITED STATES PERSONNEL IN SPAIN, AND AT NO COST TO THE UNITED STATES.

2. DOCUMENTS UNDER OFFICIAL SEAL CARRIED BY COURIER, OFFICIAL PARCELS, AND LETTER MAIL IN UNITED STATES MILITARY POSTAL CHANNELS SHALL NOT BE SUBJECT TO CUSTOMS INSPECTION. SPANISH CUSTOMS AUTHORITIES MAY INSPECT PRIVATE PARCELS IN UNITED STATES MILITARY POSTAL CHANNELS ON A "SAMPLE CHECK" BASIS IN A MANNER THAT WILL NOT DAMAGE THE CONTENTS OF THE PARCELS OR DELAY DELIVERY OF THE MAIL, AND AT NO COST TO THE UNITED STATES. SUCH

INSPECTIONS WILL BE CONDUCTED IN UNITED STATES MILITARY POSTAL FACILITIES IN THE PRESENCE OF UNITED STATES AUTHORITIES. NO PARCEL WILL BE REMOVED FROM UNITED STATES MILITARY POSTAL CHANNELS BY SPANISH CUSTOMS AUTHORITIES EXCEPT AS AGREED BY UNITED STATES AUTHORITIES.

3. EMBASSY SHOULD INFORM PERINAT THAT WE WILL PROVIDE TEXT OF PROPOSED NEW ARTICLE XXIII AND PROCEDURAL ANNEX AT TIME OF WASHINGTON MEETINGS.

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